

E-FILED: September 11, 2012

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

TRIEU PHAM,

No. C12-01750 HRL

Plaintiff,

**ORDER THAT CASE BE REASSIGNED
TO A DISTRICT JUDGE**

v.

**REPORT AND RECOMMENDATION RE
DISMISSAL WITHOUT PREJUDICE**

CITY OF SAN JOSE, a municipality; SAN
JOSE POLICE DEPARTMENT, a department
of municipality; OFFICER HERNANDEZ, an
individual; SGT. MONTONYE, an individual;
and DOES 1-20,

Defendants.

On April 4, 2012, pro se plaintiff Trieu Pham filed this action, alleging civil rights violations. There is no indication that defendants have been served, and the deadline for service has passed. FED. R. CIV. P. 4(m). On July 5, 2012, the court issued a clerk's notice continuing the date for the initial case management conference and related deadlines. (Dkt. No. 4). On July 10, 2012, that notice was returned as undeliverable.¹ (Dkt. No. 5). Pham did not appear for the August 7, 2012 initial case management conference. And, on August 8, 2012, this court issued an order directing him to file a response, no later than August 24, 2012, explaining why this case should not be dismissed for failure to prosecute. (Dkt. No. 7).

¹ Although Pham never filed an application for permission to e-file, the ECF system indicates that he may be receiving electronic notices of all court filings.

1 On August 13, 2012, the order to show cause was also returned as undeliverable. The
2 next day, the Clerk of the Court forwarded that order to the new address that the Post Office
3 listed on the envelope for Pham.² (Dkt. No. 8).

4 There has been no response from plaintiff.

5 Accordingly, the Clerk of the Court shall reassign this case to a District Judge, and the
6 undersigned recommends that the instant action be dismissed without prejudice for failure to
7 prosecute. FED. R. CIV. P. 41(b).

8 Any party may file objections to this report and recommendation with the District Judge
9 within fourteen days after being served with a copy. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P.
10 72(b).

11 SO ORDERED.

12 Dated: September 11, 2012

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15 HOWARD R. LLOYD
16 UNITED STATES MAGISTRATE JUDGE
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26 ² Plaintiff was obliged to provide the court with his current address by
27 September 10, 2012. See Civ. L.R. 3-11(b) (providing that a case may be dismissed without
28 prejudice if mail has been returned as undeliverable, and “[t]he Court fails to receive within
60 days of this return a written communication from the attorney or pro se party indicating a
current address.”). Because plaintiff evidently is no longer receiving mail at the Los Gatos
address he provided, and since he has not given the court any other contact information, this
order will be sent to the address the Post Office has identified for him.

United States District Court
For the Northern District of California

5:12-cv-01750-HRL Notice has been electronically mailed to:

Trieu Pham
2275 S. Bascom Avenue, Apt. 407
Campbell, CA 95008-4357